

United States District Court
District of Oregon

07 AUG 20 08:20 RECD USDC-ORP

A.B. et al.

v.

Andrew Kowalczyk
Defendant.

Case No: 3:19-CV-01521-MO

Motion to Recuse

Judge Mosman.

Declaration in Support.

I declare:

Defendant Andrew Kowalczyk hereby moves for recusal of Judge Michael Mosman in the above case, under both recusal statutes. Due to no access to legal material and law library the exact statutes and supporting case law cannot be obtained and used herein. (Possibly under ^{USC} 145 and 475).

An appearance of bias and/or ~~neglect~~ prejudice and/or non-impartial judge is evident. Further, a long history of favoritism and incorrect adverse rulings against Defendant involving plaintiffs have occurred by Mosman for over 8 years now in case 3:18-CR-0095-MO. In the criminal case Mosman has violated Defendant Kowalczyk's rights and rules severely and habitually. Defendant cannot receive a fair and impartial pre-trial - trial in this civil case with Mosman as the judge. Defendant hereby incorporates all recusal motions filed on Mosman in the above criminal case (two). Further, incorporates the whole record from criminal case that shows nothing but denials of ~~neglect~~ motions etc. towards Defendant in favor of the above parties and government.

1 of 8 recd

In this current civil case Defendant was never served summons/complaint and has sent mail notifying this judge and clerk so. Defendant has mailed and submitted to this court at least 6 separate motions- requests for subpoenas to ~~to serve~~ on BOP-Sheridan to obtain records. Defendant states prove Defendant was never served personally as the Yamhill county sheriff claims and plaintiffs attorney — has notified court records exist these are medical records etc that the plaintiff has no access to and cannot disclose to Defendant! Defendant has sent these ^{at least} 6 requests over the past 6-7 months to this court. Mosman has a history of not accepting and docketing Defendants those submissions and that is believed to be occurring in this case again.

Since Defendant has not received no complaint and summons, he could never write a response nor research ways for any defense or summary judgement, nor dispute any facts, make needed discovery requests to do so ect. This is yet another railroading by Mosman. Defendant has constantly notified the court that he is experiencing a "denial of access to courts" and "cruel and unusual punishment", Constitutional rights violations at the Prison USP Tucson, this is largely do to judge Mosmans 2 bogus rulings against Defendant in above

criminal case. Where Mosman denied the rule 38b motion, continuances, expert funds, held no evidentiary hearing for the over 75 objections to PSR at sentencing (not grant a continuance for it too) and adopted the extreme false PSR and severe inflammatory content. Mosman refused to consider any of defendant's medical needs and correction care as required when sentenced! Causing Defendant to go to a dangerous USP in BOP and get barely any medical treatment - ~~no~~ care, mental health medication - treatment, disability accommodations etc. needed! All of Defendant claimed to occur in Defendant Rule 38b motion has occurred and in many cases even worse! Defendant has spent 70% of his time in SHU, had virtually no phone access, no email access, extreme problems with not getting mail and others receiving, no access to law library, no access to legal material, stripped of needed mental health meds, no needed handicap accommodations, stranded without a wheelchair, extreme harassment by staff due to inflammatory content in PSR and much more. Defendant's family has had to pay over \$25,000 in civil rights attorneys to try and solve problems, with little results.

An emergency TRO is being filed to stop some of the extreme cruel and unusual and due process violations occurring past/currently. Because Mosman

3
Reusal

denied Defendants motion to stay at Mult Co. jail after trial and approved Defendants to go to Sheridan per marshals request, he was given complete fraudulent mental health screening at intake that lowered his carelevel to a 2 and caused him not to go to needed F.M.C. Because Mosman ~~that he~~ refused to rule on the later Prose injunction to be removed from Sheridan and later motions not to be ever housed there, after sentencing Defendant was illegally taken to Sheridan and severely retaliated on, thrown in suicide watch illegally and stripped of all legal materials, given no food/water for 5 days. Mult Co. health only approved marshals to cut off Defendant to designated BOP, the marshals had to Mult Co. and took Defendant to BOP Sheridan and drove him in a van, severely abusing him on the drive! Sheridan then withheld all legal material and labeled it "personal property", put it all in disarray and lost $\frac{1}{3}$ or more of the most important material saved of 17 years of work, irreplaceable documents! These marshals work in Mosman's court room and is believed to conspire with Mosman to continue to violate rights, torture, and cause to lose the appeal against Mosman. The following

is a incomplete summary of illegal things Mosman has done to the defendant in past. Mosman viewed over 100 inflammatory child porn pictures he behavior Defendant partook in and is extremely hostile towards defendant over this type of crime, Defendant moved verbally to recuse Mosman at sentencing, do to prosecutors verified statement quote of Mosman, that people who produce child pornography belong in the "inner rings of hell", and "kills the soul" of ~~the~~ humans Mosman stated. Noteworthy below is:

Mosman's refusal to file pro se material Defendant submitted after illegally forcing Defendant to be Prose (as 9th Circuit found in interlocutory appeal!), what type of fair, non bias, non prejudiced, non playing favorites against Defendant, impartial judge does that! Mosman Denied all motions of Defendants that had any substance, 95% of all motions!

In chronological order; starting 2012:

- ① Mosman ordered I not be able to speak to any other attorney or investigator regarding the criminal case
- ② Forced me to be Prose illegally - falsely stating I was delaying case ~~so~~ with bad/unjust motives of not able to working with attorney - The 9th Circuit found this in interlocutory appeal.
- ③ Then forced me to represent my self and competency hearing and after being

found incompetent.

- (4) Then kept me prose, violating precedent and statutes and was aware he was doing so.
- (5) While forced Prose Mosman refused to accept and docket all my Prose Filings, the 9th Cir had to order Mosman to do so, an order he revisited in 2019.
- (6) After 9th Cir. found I was not intentionally delaying case in bad faith, Mosman stated I was and used the bogus rational to deny continuance and other important motions.
- (7) Mosman was also forced by 9th Cir. to appoint me an attorney as he illegally forced me prose for ~~no~~ years.
- (8) Mosman through out good testimony of expert that cost many tens of thousands with no valid justification, falsely discrediting expert in order to find me competent.
- (9) Mosman held farce motion to substitute attorney hearings, several, and would not let me speak and present evidence at the hearings to show the relationship was in conflict and bad.
- (10) Falsely denied renewed suppression motions that should have been granted.
- (11) Gave a highly fraudulent verbal competency finding opinion, e.g. Stated my psychologist Dr. Goldman stated I was currently malingering. Attorney Mr. Segal submitted signed statement from Dr. Goldman that Mosman falsely stated his testimony.
- (12)

In opinion, this again was used to find me competent and railroad me into conviction.

(12) Let me wear jail clothes at beginning of trial

(13) Denied Rule 41g motion for no reason, governments interests could be met, thus requiring return of property needed for sentencing and 2255 motion. Mormon habitually obstructs ability to fight my case.

(13) Did not follow any of the farcical rules - proceedings under Rule 32.2, was motioned to do so several times and refused to

(14) Falsely denied very valid continuance for sentencing - violating my rights

(15) Falsely denied valid fund requests for experts for sentencing

(16) Illegally disclosed PSR to victim, disobeying 9th Cir. precedent, granted disclosure with no specific reasons as required

(17) In retaliation denied a very expensive Rule 38b motion on a hour after notified a Writ of Mandamus was filed in dispute of Mormons false ruling. Which has prevented me access to court to work on appeal.

(18) Did nothing about the 75 plus unresolved objections to PSR as required by law to do at sentencing. Held no evidentiary hearing regarding ~~defendant's~~ Defendants objections at sentencing, but

This court is denying me due process, accommodations, etc. based on its prejudiced/false beliefs, I'm not truthfull, creditable, delay case in bad faith, and creates unfair case here! Must reverse - Court falsely found me to no longer be not far Rose
adopted all 75 false and extremely Rose
inflammatory statements in PSR, which
has cause defendant to be extremely
abused and rights violated by BOP
inmates, wrong placement and dangerous
use, no needed medical, no mental health
care, no handling accommodations, denial
of access to calls in STU and no
ability to communicate to others on
outside of prison etc.

(19) Never put order as previous judge did
not tell go to Sheldon, in fact
approved going to Sheldon, with out
asking my attorney nor me, conspirony
with Marshalls and BOP to do a
bunch of very corrupt things; e.g.,
falsifying mental and medical records
so I get time care which
diverts me from working on case, held
me in suicide watch when not
suicidal where an attempt to kill
me by staff occurred by no food
water and forced withdraw of
medications that could kill me.

→ (20) Gave me 270 years which law states I'm to get no more time
the necessary - shows extreme harshness in nothing to me.
I have not been able to complete this research as
needed, I have no access to legal material of any
lawlibrary etc. I asked for stay /contemnance
to do so. There is bound appearance of informers to
public by judge Mosman and has etc. This was done for memory
I declare the above is true and correct under penalty
of perjury of U.S. laws.

BOP refusal

6/30/20 Andrew Koenig
Date Please